

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
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Revision of the Commission's Rules To Ensure ) CC Docket No. 94-102  
Compatibility With Enhanced 911 Emergency )  
Calling Systems )  
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To: The Commission

**REQUEST FOR LIMITED WAIVER OF EASTERN SUB-RSA LIMITED  
PARTNERSHIP**

Eastern Sub-RSA Limited Partnership ("ESRLP"), by its attorneys, and pursuant to Sections 1.3 and 1.925 of the Commission's Rules,<sup>1</sup> hereby requests a limited waiver of the December 31, 2005 deadline for achieving a 95 percent penetration rate for location-capable handsets, as set forth in 47 C.F.R. § 20.18(g)(1)(v). ESRLP provides cellular service on the B2 portion of the Block B frequencies in the Washington 5 – Kittitas RSA (call sign KNKQ283). ESRLP takes its E911 responsibilities seriously and is fully compliant with its obligation to implement E911 service to requesting Public Safety Answering Points ("PSAPs"). ESRLP also has met each of the interim deadlines applicable to the activation of location-capable handsets, and ESRLP is currently devoting significant amounts of its resources in an attempt to achieve the December 31, 2005 95 percent penetration deadline for location-capable handsets. Unfortunately, and despite ESRLP's best efforts to promote to its customers handsets with

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<sup>1</sup> 47 C.F.R. §§ 1.3, 1.925.

automatic location identification (“ALI”), a small percentage of ESRLP’s customers are unwilling to upgrade from their analog phones to location-capable digital handsets. Consequently, it is not possible for ESRLP to achieve 95 percent penetration of ALI phones by December 31, 2005. Accordingly, ESRLP must respectfully request a limited extension of the Commission’s December 31, 2005 deadline for achieving a 95 percent penetration rate for location-capable handsets while ESRLP continues its efforts toward achieving full compliance with this requirement.

## **I. BACKGROUND**

In an effort to more effectively achieve compliance with various Commission mandates, ESRLP undertook a CDMA overlay of its existing cellular network. ESRLP’s efforts commenced in 2002, and ESRLP has achieved nearly 100 percent coverage of its cellular footprint with its CDMA overlay. ESRLP is utilizing a handset-based location technology solution to provide Phase II E911 service.

Pursuant to, and in advance of the deadlines under, the Commission’s rules applicable to handset-based E911 solutions, ESRLP began activating and selling ALI-capable handsets in mid-2003 – well in advance of the Commission’s September 1, 2003 deadline. ESRLP continued to achieve each of the FCC’s interim handset activation deadlines, in each instance before the date specified in the FCC’s rules. Since January, 2004, all of ESRLP’s new digital handset sales and activations have been exclusively ALI-capable handsets (well in advance of the November 30, 2004 deadline for 100 percent of new digital handset sales and activations applicable to other Tier III carriers).<sup>2</sup> Unlike many other Tier III carriers, ESRLP has not sought waivers of Phase II milestones in the past.

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<sup>2</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petitions for Waiver of Enhanced 911 Phase II Requirements*, (continued on next page)

The December 31, 2005 95 percent penetration deadline presents significant challenges for ESRLP due to the unique aspects of its service area and terrain. ESRLP's cellular system serves a vast geographic area, sparsely populated, and characterized by rugged and variable terrain. ESRLP's system covers an area 6,124 square miles in size, including extensions outside of its market boundaries. ESRLP's system covers 96.45 percent of the area encompassed within the B2 portion of the Washington 5 RSA.<sup>3</sup> Many of these areas are remote, rural areas: the three counties comprising ESRLP's service area have population densities of 4.5, 8.5 and 27.9 people per square mile – far lower than the average population density for the state, which is 88.6 people per square mile. The terrain varies widely, with ground elevations ranging from 570 to 3461 feet above sea level. The remote nature of the coverage area, and the service quality challenges presented by the varying terrain, make a small percentage of ESRLP's customers very reluctant to convert from traditional analog phones, which have more powerful mobile antennae, to more advanced, location-capable digital phones. Indeed, the Commission has acknowledged this circumstance, noting that other carriers have reported that “because of the propagation characteristics of digital technologies, coupled with the lower power of digital handsets as compared to analog “bag phones” and mobile units, there are areas where a subscriber using an

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Order, CC Docket No. 94-102, FCC 05-182, at ¶ 18 (rel. Oct. 28, 2005) (“*Mid-Missouri et al. Order*”) (“timely meeting applicable sale and activation deadlines” and “[i]n particular, ensuring that 100 percent of all new digital handsets activated are location-capable is an important step that should eventually lead to ninety-five percent penetration of location-capable handsets.”).

<sup>3</sup> ESRLP's system serves 5,573 of the 5,778 square miles encompassed in the B2 portion of the Washington 5 RSA.

analog unit can obtain coverage where a CDMA digital subscriber cannot” – thus causing some analog users to be reluctant to trade-in their phone for a digital handset.<sup>4</sup>

Notwithstanding these challenges, ESRLP has had efforts (more fully described below) underway since November, 2003 to encourage customers to switch to digital handsets. Those efforts have borne, and continue to bear, significant fruit – as of October 1, 2005, approximately 81 percent of ESRLP’s customers had ALI-capable handsets, and at the time of the instant filing, approximately 82.50 percent of its customers have upgraded to ALI-capable handsets – underscoring ESRLP’s good faith compliance efforts. Based on the trend of customer conversions to ALI-capable handsets (previously at 1.5 percent per month), and ESRLP’s expectation that the rate of conversions will slow as ESRLP gets closer to the 95 percent mark, ESRLP anticipates that it will be in compliance with the 95 percent penetration requirement by October 31, 2006.

Recognizing the challenges faced by Tier III carriers, in the past the Commission has revised Phase II handset deployment deadlines for many Tier III carriers seeking limited relief from handset compliance benchmarks.<sup>5</sup> As demonstrated below, a grant of a limited waiver to ESRLP would be consistent with the public interest, the Commission’s rules and policies

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<sup>4</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers*, Order, CC Docket No. 94-102; FCC 05-182, at ¶18 (rel. Oct. 28, 2005).

<sup>5</sup> *See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers*, Order to Stay, CC Docket No. 94-102, 17 FCC Rcd. 14841, 14852-53 (2002); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order to Stay, 18 FCC Rcd. 20987 (2003) (“*Tier III Stay Order*”); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers*, Order, 20 FCC Rcd. 7709, 7716-43 (2005) (“*Tier III Relief Order*”); *Mid-Missouri et al. Order*.

regarding waivers, and the Commission's April 1, 2005 *Tier III Relief Order* granting relief from the 95 percent benchmark deadline to seven Tier III carriers.

## **II. ESRLP IS ON A CLEAR PATH TO FULL COMPLIANCE**

In the *Tier III Stay Order*, the Commission required Tier III carriers seeking waivers to provide evidence "that the petitioner has put in place a clear path to compliance."<sup>6</sup> Similarly, in the *Tier III Relief Order*, the Commission granted the Tier III carriers relief where the carriers were able to demonstrate that they had a "concrete, specific plan" and "a clear path to full compliance" for meeting the Commission's requirements.<sup>7</sup> ESRLP has outlined, and already embarked upon a multi-faceted "clear path to full compliance" to achieve 95 percent penetration of ALI-capable handsets.

ESRLP provides ALI-capable handsets for free to both new customers and to existing customers who renew their service and sign new agreements for service. ESRLP estimates that this offering saves customers an average of \$120.00. This program has been in effect since November, 2003.

To further enhance the effectiveness of this program, ESRLP intends to begin an aggressive campaign targeted at its analog phone users to remind them of their ability to trade-in their analog handset for a free digital phone. To ensure that its subscribers are notified, ESRLP plans to utilize direct mail flyers, in-store point-of-purchase flyers, notification on either their monthly statements or as an insert to their monthly statement, or by direct phone calls.

Moreover, ESRLP is finalizing plans to provide an additional incentive for its current analog customers to exchange their phones for digital phones. For example, ESRLP will give

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<sup>6</sup> *Tier III Stay Order*, 18 FCC Rcd at 20994.

<sup>7</sup> *Tier III Relief Order*, 20 FCC Rcd at 7715.

500 bonus minutes to qualified subscribers if they upgrade their handsets. ESRLP is implementing this new program in its next billing cycle this month. ESRLP will conduct internal training for ESRLP's sales staff to ensure that qualified subscribers are offered upgrades at ESRLP stores.

Finally, ESRLP is taking several steps to diminish the perceived coverage superiority of analog phones. First, ESRLP will be constructing additional facilities to enhance its digital coverage – ESRLP has plans to construct eight of such sites in 2006 – and plans to introduce a digital bag-phone manufactured by Motorola which will have transmission characteristics that approach those of traditional analog phones. In addition, ESRLP makes available for purchase external antennas and signal boosters that can be attached to its ALI-capable phones to enhance the signal quality.

ESRLP is committed to continuing these efforts to convince analog handset users to trade-in their phones for digital handsets. As discussed above, ESRLP estimates that it will achieve full compliance by October 31, 2006.

### **III. GRANT OF A LIMITED WAIVER IS CONSISTENT WITH THE PUBLIC INTEREST AND DOES NOT FRUSTRATE THE FCC'S E911 OBJECTIVES**

The Commission's rules may be waived for good cause shown -- where special circumstances warrant a deviation from the general rule, and such deviation serves the public interest.<sup>8</sup> As discussed *supra*, the Commission has acknowledged that waivers may be warranted

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<sup>8</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Section 1.925(b)(3) provides further that waiver may be warranted if “(i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” 47 C.F.R. § 1.925(b)(3).

for E911 Phase II handset milestones, and clarified how this standard would be applied in the E911 context, finding that requests for waiver should be “specific, focused and limited in scope, and with a clear path to full compliance.”<sup>9</sup> The Commission added that “carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver requests.”<sup>10</sup>

Granting ESRLP a waiver through October 31, 2006 to achieve the 95 percent handset penetration milestone is consistent with the public interest. ESRLP has achieved 82.50 percent penetration of ALI-capable handsets in its subscriber base. Through the measures described above, including the provision of free location-capable handsets, focused efforts to inform customers of the E911 benefits of handset upgrades, and continued build-out of its CDMA system, ESRLP has designed a clear path to full compliance.<sup>11</sup> ESRLP has already commenced this program – including making location-capable phones available for free to new customers and existing customers with new contracts, sustained marketing efforts, promotions, and other customer-educational measures regarding the benefits of digital handsets and ESRLP’s incentives for trading-in their old analog phones. However, in recognition that more needs to be done, ESRLP has designed additional programs aimed at accelerating exchanges of analog for

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<sup>9</sup> *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd. 17442, ¶ 44 (2000) (“*E911 Fourth MO&O*”). The standard announced in the *E911 Fourth MO&O* was adapted to Tier III carriers in the *Tier III Stay Order* and the *Tier III Relief Order*.

<sup>10</sup> *E911 Fourth MO&O*, ¶ 44.

<sup>11</sup> ESRLP notes that the Commission recently granted limited relief even where such a clear path to full compliance had not been set forth. *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Enhanced 911 Phase II Waiver by Northeast Communications of Wisconsin, Inc. dba Cellcom*, Order, CC Docket No. 94-102, FCC 05-200, (rel. Dec. 8, 2005) (extension granted through December 9, 2006).

digital handsets, and will continue to do so. ESRLP's request also is very limited in scope. As noted above, ESRLP has met all prior E911 benchmark deadlines, and thus has not previously sought any waivers of the Commission's E911 rules. The instant request is limited solely to a brief extension of the 95 percent penetration benchmark until ESRLP can achieve that penetration rate through its compliance program described above.

ESRLP has undertaken numerous efforts to promote handset turnover, fully meeting the Commission's expectations of carriers. ESRLP will continue these efforts and, given its plan to achieve compliance with the 95 percent milestone, grant of the request will not frustrate the Commission's objective of making location-capable handsets widely held throughout a carrier's subscriber base.

Strict enforcement of the 95 percent milestone would be inequitable, unduly burdensome, and contrary to the public interest because it would disrupt ESRLP's analog customers by forcing them to trade-in handsets before they would otherwise do so. Not only does ESRLP offer a number of ALI-capable handsets with public safety features and capabilities to consumers, it offers four different models to customers at no additional charge with a new service contract. Given these measures, there is no need to strictly enforce the rule and require ESRLP to compel its analog phone users to upgrade their handsets.

ESRLP's request for limited relief also is warranted under the *ENHANCE 911 Act*.<sup>12</sup> The *ENHANCE 911 Act* directs the Commission to grant qualified Tier III carriers' requests for relief from the 95 percent penetration requirement deadline if "strict enforcement of the requirements

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<sup>12</sup> Indeed, as the Commission has found, relief may be warranted under the *ENHANCE 911 Act* irrespective of whether relief is warranted under the Commission's own standard. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Southern Communications Services, inc. d/b/a SouthernLINC Wireless*, Order, FCC 05-188, par. 19 n.58 (rel. Nov. 3, 2005) (relief granted "solely on the directive of the *ENHANCE 911 Act*").



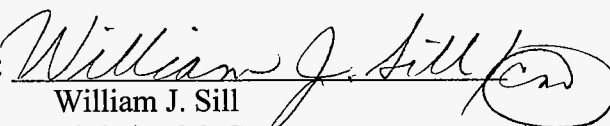
of that [rule] would result in consumers having decreased access to emergency services.”<sup>13</sup> In the rural areas in which ESRLP operates, customers should not be forced to give up higher-powered analog handsets that might provide better coverage across larger areas of diverse terrain. In this unique circumstance, if compelled to upgrade their handsets “it appears likely that strict enforcement ... would impair the ability of certain 911 callers to reach emergency assistance” thus implicating the *ENHANCE 911 Act*.<sup>14</sup>

### CONCLUSION

Based on the foregoing, grant of ESRLP’s request for a limited and temporary waiver of Section 20.18(g)(1)(v) of the rules is consistent with the public interest. ESRLP commits to continue its aggressive efforts to meet the 95 percent location-capable handset penetration mandate by October 31, 2006, or such earlier date as possible.

Respectfully submitted,

**EASTERN SUB-RSA LIMITED  
PARTNERSHIP**

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December 9, 2005

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<sup>13</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub.L.No. 108-494 at § 107, 118 Stat. 3986, 3991 (2004) (“*ENHANCE 911 Act*”).


<sup>14</sup> See *Mid-Missouri et al. Order* at ¶ 20.

# DECLARATION OF GREGORY A. MARAS

I, Gregory Maras, declare under penalty of perjury that the following is true and correct:

1. I am the Secretary of Inland Cellular Telephone Company, General Partner of Eastern Sub-RSA Limited Partnership ("ESRLP").
2. I have reviewed the foregoing Petition for Limited Waiver of the location-capable handset benchmark deadline and believe it to be true and correct to the best of my knowledge, information and belief.

This Declaration is executed this 9<sup>th</sup> day of December, 2005.

  
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Gregory A. Maras  
Secretary of General Partner,  
Inland Cellular Telephone Company